

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	James V. Candy et al	Examiner:	James M. Kish
Serial No.:	10/661,249	Art Unit:	3737
Filed:	09/11/2003	Attorney Docket No.:	IL-10941
TITLE:	DYNAMIC ACOUSTIC FOCUSING UTILIZING TIME REVERSAL	Appeal No.:	2009-008828

Honorable Commissioner for Patents
Alexandria, VA 22315-1650

Attention: Board of Patent Appeals and Interferences

Dear Sir:

REQUEST FOR REHEARING
AND RECONSIDERATION

Appellants hereby request rehearing and reconsideration of the Board Decision on Appeal dated August 6, 2010, and reversal of said decision. MPEP §1214.03 Rehearing (37 CFR 41.52 Rehearing) provides: "Appellant may file a single request for rehearing within two months of the date of the original decision of the Board.

Appellants also request rehearing and reconsideration of said Board Decision on Appeal by the Board en banc, and reversal thereof.

APPELLANTS' LACK OF OPPORTUNITY TO FILE REPLY BRIEF

Appellants did not have an opportunity to file a Reply Brief because the Examiner's Answer mailed December 10, 2010 was never received by Appellants. Appellants only learned about the December 10, 2010 Examiner's Answer during the week of January 25-29, 2010 when reviewing the status of appeals. Appellants obtained a copy of the Examiner's Answer through USPTO Private PAIR. Appellants filed a notice February 2, 2010 explaining that Examiner's Answer mailed December 10, 2010 was never received.

The Examiner's Answer mailed December 10, 2010 contains the following NEW GROUND(S) OF REJECTION in the first paragraph on page 3:

"Claims 4, 21, 41 and 61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2, 14, 29 and 44, respectively, of copending Application No. 111904,823, in view of Prada (Elsevier Sciences B.V.)."

The Board, in its decision dated August 6, 2010, in the second to last paragraph on page 6, contains the following statements:

"We AFFIRM the Examiner's decision to provisionally reject claims 4, 21, 41, and 61 on the ground of non-statutory, obviousness-type double patenting as being unpatentable over claims 2, 14, 29, and 44 of copending Application 11/904,823 in view of Prada."

The Board Decision should be reheard and reconsidered because Appellants did not have an opportunity to file a Reply Brief responding to the Examiner's Answer's NEW GROUND(S) OF REJECTION since Appellants did not receive the Examiner's Answer. Appellants should have an opportunity to file a Reply Brief responding to the Examiner's Answer's NEW GROUND(S) OF REJECTION and that opportunity would be provided by granting this request for a rehearing and reconsideration of the Board Decision on Appeal dated August 6, 2010.

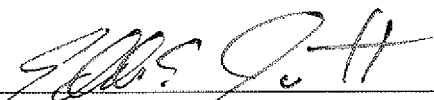
TIME LAPSE BETWEEN FINAL REJECTION AND DECISION

The Final Rejection was issued August 15, 2008. More than two years have elapsed between the August 15, 2008 Final Rejection and the August 6, 2010 DECISION OF APPEAL. Extensive changes in patent law and in the rules and procedures of the Board of Patent Appeals and Interferences have taken place during the two year period.

The Board Decision should be reheard and reconsidered because of the extensive changes in patent law and in the rules and procedures of the Board of Patent Appeals and Interferences that have taken place during the two year period between the August 15, 2008 Final Rejection and the August 6, 2010 DECISION OF APPEAL. The time lapse has made the arguments in Appellants' Appeal Brief stale.

Appellants should have an opportunity to file a new Appeal Brief incorporating new arguments responding to the extensive changes in patent law and in the rules and procedures of the Board of Patent Appeals and Interferences that have taken place during the two year period between the August 15, 2008 Final Rejection and the August 6, 2010 DECISION OF APPEAL. Since Appellants did not have an opportunity to file a Reply Brief, because the Examiner's Answer mailed 12/10/2008 was never received by Appellants, the importance of a rehearing and reconsideration of the Board Decision on Appeal is greater.

Respectfully submitted,

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